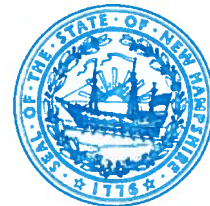




The State of New Hampshire  
**Department of Environmental Services**



**Clark B. Freise, Assistant Commissioner**

February 7, 2017

The Honorable Kevin Avar  
Chair, Senate Energy and Natural Resources Committee  
State House, Room 100  
Concord, NH 03301

**RE: SB121 – An Act relative to the MS 4 list of the department of environmental services.**

Dear Chair Avar and Members of the Committee:

Thank you for the opportunity to comment on SB121, which would require the New Hampshire Department of Environmental Services (NHDES) to complete and submit the 2014 303(d) list to the Environmental Protection Agency (EPA) and to request the delegation of authority for the National Pollutant Discharge Elimination System Permit Program (NPDES). NHDES opposes the legislation, as explained below.

As noted in SB121, every two years, NHDES is required to submit to EPA an assessment of all waterbodies in the state. This Integrated Report, known as the 303(d)/305(b) report, includes the list of the waters of the state that do not meet the state water quality standards (impaired), which is the 303(d) list. The 303(d) list is specific to those impaired waters for which a cleanup plan (or Total Maximum Daily Load (TMDL) calculation) is required. EPA is required to approve the New Hampshire list or to make its own decisions about the status of waterbodies.

The most recent list that was approved by EPA is the 2012 list. EPA took nearly two years to approve the 2012 list which caused work on the 2014 list to be delayed. The draft 2014 list was advertised for public comment in 2015. Numerous public comments were received and, based on issues raised by stakeholders, NHDES made edits to the list necessitating certain parts of the list being re-advertised for public comment. That public comment period closes on February 24, 2017, and the final list will be submitted to EPA by the end of March 2017.

In addition, NHDES is working on, and nearing completion of, calculations for the 2016 303(d) list which will be submitted to EPA as a draft and advertised for public comment in April 2017. That list will be finalized by June 2017. Work on the 2018 list will begin in December 2017 and a draft is likely to be available by April 2018. This schedule will allow NHDES to catch up in the listing cycle. It should be noted that the 2016 list includes over 3.5 million data points that cover thousands of miles of river and hundreds of lakes.

SB121 reflects the importance of the list to many communities. The 303(d) list identifies problem areas, makes clean-up efforts eligible for federal funding, and sets priorities for additional monitoring. It also is used by EPA to determine some permit requirements. These

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permit requirements have cost implications for communities, especially related to the municipal separate storm sewer system general permit (MS4). Because NHDES is poised to complete the 303(d) list related tasks required in SB121, those parts of the bill are unnecessary.

The legislation also requires NHDES to assume delegation of authority for the NPDES program. Presently, New Hampshire is one of four states in the nation that are "nondelegated" for NPDES. This issue has been raised many times over the past 20 years. It is quite clear that assuming delegation of the NPDES program would be very expensive. At one time, it was estimated that at least eleven new positions at NHDES would be needed to meet the requirements of the program. In addition, there is no current source of revenue for that work, so either general funds or a fee would be required. If a fee were required, it would have to be quite high to cover the costs of the program. Those fees would likely be borne disproportionately by municipalities. Of the 146 NPDES permits in the state, 71 are for municipal dischargers. For these reasons, the legislation should have a Fiscal Note to estimate costs to the state, counties and localities.

NHDES cannot support this bill without an understanding of the costs and the sources of revenue to operate the new program. NHDES is supportive of another bill this session, HB342, which would establish a study commission to examine the merits and costs of NPDES delegation.

Thank you again for the opportunity to comment on SB127. If you have further questions or need additional information, please contact Ted Diers ([ted.diers@des.nh.gov](mailto:ted.diers@des.nh.gov), 271-3289) or Gregg Comstock ([gregg.comstock@des.nh.gov](mailto:gregg.comstock@des.nh.gov), 271-2983).

Sincerely,



Clark B. Freise  
Assistant Commissioner

cc: Senators Sanborn and Watters, and Representative Cordelli.